



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Sacramento Fish and Wildlife Office
2800 Cottage Way W-2605
Sacramento, California 95825



In reply refer to:
FWS/EC-08-016

APR 24 2008

Dr. Karl Longley, Chair
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, California 95670

Subject: Delta Methylmercury TMDL, February 2008 Draft

Dear Dr. Longley:

First we would like to compliment the Central Valley Regional Water Quality Control Board (Regional Board) staff on the high quality of work they have done over the past several years on the difficult task of developing a methylmercury total maximum daily load (TMDL) for the Sacramento/San Joaquin Delta.

The U.S. Fish & Wildlife Service (Service) has worked with the U.S. Environmental Protection Agency (EPA) and Regional Board staff on a methodology to develop mercury fish tissue objectives that will be protective of fish and wildlife resources including threatened and endangered species. This process began when we evaluated EPA's 0.3 mg/kg mercury fish tissue criteria to determine whether it would be protective of federally listed endangered and threatened species in California (USFWS, 2003). Regional Board staff then fine tuned that methodology to develop the Cache Creek mercury objectives. Both of those documents received positive independent peer review. Regional Board staff have used this methodology to develop the Delta fish tissue methylmercury objectives to protect fish and wildlife resources. The Service believes these proposed methylmercury objectives of 0.24 mg/kg for trophic level 4 fish and 0.03 mg/kg for fish less than 50 mm in length will be protective of listed species and other fish and wildlife resources in the Delta. As we have noted previously these values should not be cast in stone and should be reevaluated as new data become available.

According to the Regional Board staff report more than three-quarters of all methylmercury loading into the Delta comes from "open water" and "tributary" sources. Many stakeholders have noted that these sources are not addressed in the proposed TMDL because they cannot be attributed to any specific responsible party. We recognize that the Regional Board staff have not ignored these loads and are working hard to address them in future TMDLs. However, it may be premature to implement actions in the Delta before upstream TMDLs are developed. We suggest that the Regional Board not fully implement the Delta TMDL until the other TMDLs are completed and the Regional Board can consider the entire Central Valley as a whole and then prioritize implementation actions. That is not to say there are no high priority actions that can be

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taken now and in the near future. These actions should address public education, research, pilot projects, hot spots, and urban source control.

The Service supports the Regional Board's use of methylmercury as the form to regulate as it is most closely correlated with bioaccumulation and impacts. We do not see using total mercury as the ideal form to regulate since the percentage of methylmercury can vary widely. The use of both to implement a TMDL and monitor water quality may be possible to lower monitoring costs; however, adequate characterization of the mercury discharge must be done with periodic confirmation.

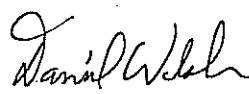
The Regional Board should clearly articulate whether the 0.06 ng/l methylmercury concentration in water is "goal" or a formal regulatory number. Having both a fish tissue objective and a water objective will be confusing and we recommend against this approach.

Regarding offsets, it seem logical to first evaluate whether an entity cannot truly identify and reduce sources of mercury in their discharges and at what costs before including them in an offset program. The offset program should also consider the local impacts of a discharge before the discharger can be considered for an offset program.

We are also supportive of the characterization and control program; however, it needs to be fine-tuned over the coming years as we learn more about mercury from the research that is being conducted in the Bay/Delta and elsewhere. We cannot afford to loose the momentum created by the CalFed Mercury Program because it will be very difficult to get it moving again should it falter. Approval of a Delta TMDL can help provide the incentive to keep us moving forward.

We will continue to work with Regional Board staff on implementing the Delta mercury TMDL and developing future mercury TMDLs. Please contact Mr. Tom Maurer (916) 414-6594 should you or your staff has any questions on our comments.

Sincerely,


for Michael B. Hoover
Acting Field Supervisor

Reference:

USFWS (U.S. Fish and Wildlife Service). 2003. Evaluation of the Clean Water Act Section 304(a) human health criterion for methylmercury: protectiveness for threatened and endangered wildlife in California. U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, Environmental Contaminants Division. Sacramento, California. 96 pp + appendix.